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FISCAL IMPACT STATEMENT

LS 7693

BILL NUMBER: HB 1500

NOTE PREPARED: Jan 15, 2007

BILL AMENDED:

SUBJECT: Alcoholic Beverage Issues.

FIRST AUTHOR: Rep. Stutzman

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Definition of Grocery Store:* This bill defines "grocery store" for purposes of the alcoholic beverage laws. The bill also allows the Alcohol and Tobacco Commission (ATC) to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2007; and (2) does not qualify for a permit as a grocery store under the definition of "grocery store".

Local Alcoholic Beverage Boards: The bill requires a local alcoholic beverage board to allow an individual to make oral comments at a public meeting or hearing.

Alcohol Displays: The bill requires a dealer permittee (that is not a package liquor store) to display alcohol in a clearly designated area where the presence of a minor is prohibited without a parent or guardian who is at least 21 years of age.

Sales Clerks: The bill requires alcoholic beverage sales in a dealer establishment to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 21 years of age (this is currently the case with package liquor stores).

Dealer Permit Quota Changes: The bill also reduces the number of liquor and beer dealer permits authorized by the quota that may be issued within a city or town.

Penalties for Sales to Minors: This bill increases the penalty for furnishing an alcoholic beverage to a minor to: (1) a Class B misdemeanor for the first offense; (2) a Class A misdemeanor for a subsequent offense; and (3) a Class D felony if the illegal furnishing of the alcoholic beverage results in serious bodily injury to or the death of any person. The bill provides that a violation occurs if a person recklessly, knowingly, or

intentionally furnishes an alcoholic beverage to a minor. (Current law provides that a violation occurs if a person recklessly furnishes an alcoholic beverage to a minor.) This bill provides for graduated civil penalties against a permittee for repeat violations of furnishing alcohol to a minor on the licensed premises.

Random ATC Searches: The bill allows the ATC to conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed.

ATC Fees and Fund Distribution Changes: This bill allows the ATC to collect the following fees for deposit in the Enforcement and Administration Fund: (1) A \$1,000 annual registration of a primary source of supply. (2) A \$100 biennial salesman's license fee. (3) A \$100 annual carrier's license fee. The bill changes the distribution of certain permit fees from the Excise Fund by: (1) eliminating the distribution to the State General Fund; and (2) increasing the distribution to the Enforcement and Administration Fund from 30% to 67%. The bill repeals a provision that distributes 37% of certain permit fees from the Excise Fund to the State General Fund.

Sting Operation Purchases by 18 year olds: The bill also allows an Excise enforcement officer to engage a person who is at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action. The bill also allows a person at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *ATC Administrative costs summary:* This bill will cause an increase in administrative costs for the ATC. The ATC will have to amend rules, forms, permit, and enforcement procedures to implement the provisions of this bill. It is estimated that these changes could be made through the use of existing staff and resources available to the ATC. The increase in expenditures will also be offset by the fee revenue increases in the bill.

Penalties for Sales to Minors: The bill establishes civil penalties for an alcohol permit holder, the holder's agent, or the holder's employee that furnishes alcohol to a minor. The bill also makes it a Class B misdemeanor for a person to intentionally sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor. (Under current law, the offense is a Class C misdemeanor.) The bill also provides that if the violator has a prior unrelated conviction the penalty is increased to a Class A misdemeanor, and the penalty becomes a Class D felony if the violation is the proximate cause of the serious bodily injury or death of any person.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Summary of Revenue Impact:* The changes in the bill to permit fee revenue distributions, and the creation of three new permit fees will result in an **increase of \$6.6 M** in revenue deposited in the ATC's **Enforcement and Administration Fund**. Of that increase, **\$5.3 M** is the result of a **shift from the state General Fund** as a result of the bill's changes to distribution formula for the Excise Fund.

Definition of Grocery Store: This bill defines grocery store as a store or a part of a store that:

- (1) has the primary North American Industry Classification System (NAICS) classification 445110 or 452910; and
- (2) is primarily engaged in the retail sale of a general food line, which may include:
 - (A) canned and frozen foods;
 - (B) dry goods, including tea, coffee, sugar, and flour;
 - (C) fresh fruits and vegetables; and
 - (D) fresh and prepared meats.

This bill could result in a decrease in dealer permit fee revenue in FY 2008. The decrease in fee revenue will ultimately depend on the administrative actions of the ATC, and the number of permittees which no longer qualify for a permit due to the definition of grocery store.

The bill gives the ATC the option of renewing or transferring ownership of a beer dealer's permit held by a permittee who was issued the beer dealer permit as a grocery store, but now falls outside the definition of grocery store in the bill. This provision will offset some of the possible decrease in dealer permits due to the definition of grocery store.

Alcohol Displays: This bill requires a dealer permittee (other than a package liquor store) to display alcohol in a clearly designated area where the presence of a minor is prohibited without a parent or guardian who is at least 21 years of age. This provision of the bill will only have a fiscal impact to the extent that alcohol sales are affected by the display requirements set forth in the bill (also see *Background on Alcohol Sales:* section below). The impact of this bill on state revenues is indeterminable. This bill could decrease dealer permit fee revenue, as well as Sales Tax and Alcoholic Beverage Tax collections.

Sales Clerks: The bill requires a sales clerk in any dealer permittee establishment to obtain an employee permit from the ATC and alcohol server training in order to ring up sales of alcohol. This provision of the bill will increase employee permit fee revenue to the Excise Police Retirement Fund and the ATC's Enforcement and Administration Fund. The increase in fee revenue is expected to be over \$110,000 in FY 2008, and \$110,000 every two years thereafter since employee permits are issued on a biennial basis. This estimate is based on the assumption that all dealer permit holders will have at least two sales clerks that obtain an employee permit at each establishment. This estimate was also offset by the fact that under current law, package liquor store sales clerks are already required to obtain employee permits. The ATC estimates that there are approximately 1,850 dealer permit holders that are not package liquor stores. The fee for an employee permit is \$30.

Dealer Permit Quota Change: The bill allows the ATC to grant one: beer dealer's permit or liquor dealer's permit in an incorporated city, town, or unincorporated town for each 4,500 persons (1,500 persons under current law). The bill also allows the ATC to renew or transfer a beer dealer's or liquor dealer's permit for a beer dealer or liquor dealer who held a permit before July 1, 2007, and does not qualify for a permit as a result of the quota requirement. This change in the quota requirement will decrease the total number of beer dealer permits that may be issued.

Therefore, this provision of the bill could cause a decrease in dealer permit fee revenue. The impact is indeterminable and will ultimately depend upon the number of cities and towns that have already issued the full number of allowable dealer permits. By allowing the ATC to renew or transfer beer dealer permits issued prior to July 1, 2007 the total number of beer dealer permits currently issued should not decrease.

The impact will only be realized for a city or town that has a decrease in the number of available (unissued) permits. For example, on July 2, 2007, a city has issued 5 dealer permits, and under the current quota could issue 5 more permits. If this bill passes, that city, under the new quota in the bill, may only be allowed, because of the population restrictions, to issue 2 more dealer permits. Therefore, the true impact is the decrease in the number of unfilled permits. In this example, the impact would be the decreased amount of potential fee revenue from a 10 permit quota going down to a 7 permit quota.

Penalties for Sales to Minors: Any civil penalties collected would increase revenue to the Enforcement and Administration Fund (EAF), the state General Fund, and the general funds of cities and towns. The penalty revenue would be deposited 34% in the EAF and 66% in the state General Fund. The state would then retain 50% of the General Fund distribution, and the remainder is distributed to cities and towns based on population.

As a result of the change in the criminal penalty for sales to minors, revenue to the Common School Fund may increase if a person is sentenced for one of the higher penalties. The maximum fine for a Class C misdemeanor is \$500, while the maximum fine for a Class B misdemeanor is \$1,000. The maximum fine for a Class A misdemeanor is \$5,000, and for a Class D felony is \$10,000. However, any additional revenue is likely to be small. Court fees would remain unchanged.

ATC Fees and Fund Distribution Changes: This bill will result in an increase of approximately \$6.6 M in fee revenues deposited in the ATC's Enforcement and Administration Fund (EAF) each year. \$5.3 M of the revenue in the estimate above will be shifted from the state General Fund to the EAF due to the change to the distribution of Excise Fund revenues contained in the bill.

This bill allows the ATC to collect the following *NEW* fees for deposit in the EAF:

- (1) A \$1,000 annual registration of a primary source of supply.
- (2) A \$100 biennial salesman's license fee.
- (3) A \$100 annual carrier's license fee.

The bill changes the distribution of certain permit fees from the excise fund by: (1) eliminating the distribution to the state General Fund; and (2) increasing the distribution to the EAF from 30% to 67%. The bill repeals a provision that distributes 37% of certain permit fees from the Excise Fund to the state General Fund.

Background on Grocery Store Definition: According to the ATC there are approximately 1,240 grocery store beer dealer permits issued under IC 7.1-3-5-2. It is estimated that approximately 200 to 300 of these permittees would fall outside the bill's definition of grocery store. This estimate assumes that the ratio of permittees falling outside the definition in the bill is the same ratio estimated by the 2002 Economic Census statistics for the ratio of convenience stores (NAICS code 445120) to both grocery stores (other than convenience stores) (NAICS code 445110) and warehouse clubs and superstores (NAICS code 452910).

Background on Alcohol Sales: To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax. The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the ATC Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population. Sales Tax revenue is deposited in the: Property Tax

Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

Background on Dealer Permit Fee: The fee for a beer, liquor, or wine dealer permit is \$500 each, paid annually. These fees are deposited in the Excise Fund, and then redistributed 37% to the state General Fund, 33% to the general funds of cities, towns and counties, and 30% to the Enforcement and Administration Fund.

Explanation of Local Expenditures: *Local Alcoholic Beverage Boards:* Requiring local alcoholic beverage boards to allow individuals to make oral comments at public meetings or hearing is not expected to have a fiscal impact on the boards.

Penalties for Sales to Minors: The maximum term of imprisonment for a Class C misdemeanor is up to 60 days, while the maximum term for a Class B misdemeanor is up to 180 days. However, any additional costs to local governments are likely to be small.

Explanation of Local Revenues: *Background on Alcohol Sales:* The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population.

Penalties for Sales to Minors: Court fees would remain unchanged. Any civil penalties collected would increase revenue to the Enforcement and Administration Fund (EAF), the state General Fund, and the general funds of cities and towns. The penalty revenue would be deposited 34% in the EAF and 66% in the state General Fund. The state would then retain 50% of the General Fund distribution, and the remainder is distributed to cities and towns based on population.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts; local law enforcement agencies; local alcoholic beverage boards.

Information Sources: ATC Permit Count, October 2006.

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